



WISCONSIN LEGISLATURE

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For More Information, Contact:

Senator Julie Lassa
(608) 266-3123

Representative Mark Gundrum
(608) 267-5158

Strangulation Prevention Enforcement Act Bipartisan Bill to Protect Battery Victims

Madison – Senator Julie Lassa (D – Stevens Point) and Representative Mark Gundrum (R – New Berlin) will introduce legislation to strengthen penalties for assaults which include non-fatal strangulation or suffocation of the victim.

The bill is co-authored by Sen. Dan Kapanke (R-La Crosse), Sen. Ted Kanavas (R-Waukesha), and Rep. Ann Hraychuck (D-Balsam Lake).

Strangling and smothering attacks are both dangerous, and more common than most people think, according to a 2001 Journal of Emergency Medicine study. This study also found that these types of attacks are even more common in instances of spousal abuse.

Wisconsin law limits penalties for non-fatal strangling and suffocating attacks to misdemeanors in most cases. This bipartisan legislation will strengthen the law to allow prosecutors to charge batterers with felonies instead of misdemeanors.

The bill:

- Creates a Class H felony - \$10,000 fine or a prison term not to exceed 6 years or both - for intentionally strangling or suffocating a victim;
- Modifies the current definition of “dangerous weapon” to include anything used to strangle or suffocate a victim;
- Includes bruising or other markings on the neck, throat, or face caused by strangling or suffocating in the definition for “substantial bodily harm.”

“These changes will strengthen penalties and enable prosecutors to treat instances of non-fatal strangulation or suffocation with the severity they deserve,” said Lassa. “This loophole has allowed batterers to avoid serious penalties for too long.”

“As the law stands today, batterers can commit a frightening and potentially dangerous act of violence and face relatively light penalties for it,” said Gundrum. “Punishments should fit the crime.”

Currently, seven other states treat non-fatal strangulation and suffocation attacks as felonies.

Other groups supporting this legislation include:

- Association of State Prosecutors
- Wisconsin Chapter of the International Association of Forensic Nurses
- Wisconsin Coalition Against Domestic Violence
- Wisconsin Coalition Against Sexual Assault
- Wisconsin District Attorneys Association
- Wisconsin Sheriffs and Deputy Sheriffs Association

- Wisconsin Victim/Witness Professionals

Memo



To: Members of the Assembly Committee on Judiciary & Ethics

From: Josh Freker, Policy Director, WCADV, 608-255-0539, joshf@wcadv.org

Date: September 6, 2007

Re: Testimony in support of LRB 2285, Strangulation Prevention Enforcement Act (SPEA)

Thank you for providing an opportunity to share my organization's perspective on LRB 2285, the Strangulation Prevention Enforcement Act (SPEA). I represent the Wisconsin Coalition Against Domestic Violence, which is the statewide voice for victims of domestic violence and the local programs in every county of our state that serve them. We have been a part of the workgroup of diverse organizations that came together many months ago to address the problem of strangulation. We fully support the SPEA and hope you will too.

Strangulation has only recently been identified as one of the most lethal forms of domestic violence. Historically, "choking" was rarely prosecuted as a serious offense because victims minimize the level of violence they experience, and police or medical personnel fail to recognize it. As awareness of strangulation has grown, we have observed a pattern in which strangulation is used by abusers as they begin to escalate violence in a relationship. In other words, strangulation, when detected, is a strong indicator of an overall and potentially deadly pattern of violence in an intimate relationship.

Strangulation is one of the many tactics that abusers use to silence, coerce, control, and sometimes kill their victims. Local programs that run domestic violence help lines, operate support groups, and provide shelter to victims in crisis increasingly tell us that strangulation is a serious problem--not just because of its consistent use by abusers but also because current law does not adequately address this crime.

While it's currently difficult to track all incidents of strangulation, a review of homicides can provide at least a small snapshot of its scope. Each year, WCADV releases a report of domestic violence-related homicides. Our 2005 report has not yet been released, but we have found that out of 34 total homicides that year, three victims were strangled to death. An additional three cases also involved strangulation. That means 17% of domestic violence homicides involved strangulation in 2005. In 2004, strangulation was involved in at least 12 percent of the 33 DV homicides we identified that year. Nationwide, research has found that up to 10 percent of all violent deaths each year stem from strangulation.

Particularly because strangulation can leave no visible injury or cause bruising days after it occurs, abusers too often get away with misdemeanors or no charges even when they cause serious harm to their victims. Abusers often deliberately use tactics—like strangulation—that will not cause visible bruising so that their victims will be terrorized yet go about their daily life without friends, family, or the general public observing any physical signs of the abuse. If abusers think they can get away with violence without punishment, they will. That's the nature of domestic violence—it's calculated and it's about maintaining power over victims' lives.

The bill before us today, SPEA, will give law enforcement better guidance to adequately handle the severity and danger of strangulation for victims. By explicitly spelling out the crime of strangulation as a felony, the bill will be a powerful tool for intervening in domestic violence and keeping it from intensifying. It will hold abusers accountable, and it could potentially help save lives.



By Doug Hissom
Special to OMC

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In Politics Commentary

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Spewing on SPEA: Here's one law that shouldn't be too difficult to get behind -- the Strangulation Prevention Enforcement Act, with a heady acronym known as SPEA. It should be easy to pass this bill since we've heard few advocates backing strangulation lately. Showing an amazing acumen of bi-partisanship that would certainly go a long ways to get a state budget passed, state Sens. Julie Lassa (D-Stevens Point), Dan Kapanke (R-LaCrosse) and our own Ted Kanavas (R-Brookfield) along with state Reps. Mark Gundrum (R-New Berlin) and Ann Hraychuck (D-Balsam Lake) have cast down their partisan spears and joined in a united effort to end this scourge of strangulation. It's being termed a "homicide prevention" bill.

"The legislation achieves this by closing a loophole that has allowed batterers to avoid any serious penalty for committing dangerous acts of strangulation and suffocation because current laws focus on the injury suffered to the victim as opposed to the danger posed by the batterer's conduct," reads a statement announcing the initiative. And we thought prosecutors are supposed to be prosecuting batterers and throwing them in prison. Apparently, stranglers have been charged with misdemeanors for way too long. This bill makes strangling a felony.

And there are a whole bunch of nice people supporting this bill including: The Association of State Prosecutors (ASP), the Wisconsin Chapter of the International Association of Forensic Nurses (WI-IAFN), the Wisconsin Coalition Against Domestic Violence (WCADV), the Wisconsin Coalition Against Sexual Assault (WCASA), the Wisconsin District Attorneys Association (WDAA), the Wisconsin Sheriff's and Deputy Sheriffs Association (WSDSA), and the Wisconsin Victim/Witness Professionals (WVWP).



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Wisconsin Police Chief

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Preventing Homicide through the Living:

How a Strangulation/Suffocation Statute Stops Tomorrow's Killers

By:

Winn S. Collins, Assistant District Attorney

Outagamie County District Attorney's Office
320 South Walnut Street
Appleton, WI 54911-5990
Telephone: (920) 832-5024

On a chilly October evening in 2005, Mary and her boyfriend, Rick, went to her residence after they had been drinking at a tavern a few blocks from her residence. Upon returning home, Mary told Rick he needed to stop coming around to her residence so often because of recent problems in the relationship, including a prior disturbance when Rick assaulted Mary, which resulted in a pending charge for misdemeanor battery with an ongoing no contact order from the court prohibiting Rick from having contact with Mary. Rick became upset with Mary for wanting to end their four year relationship so he grabbed Mary from behind and placed his hand around Mary's nose and mouth. Rick began to apply pressure while telling Mary they "both need to die." Mary had trouble breathing and struggled to break free. Initially, Mary was able to free herself and she started to run to exit the residence. Rick followed and grabbed Mary around the throat before again applying pressure and telling her they "both need to die." Mary broke free, running outside the residence without any shoes, socks or jacket. Mary ran for several blocks, back to the tavern where the evening began. Once at the tavern, a patron called 9-1-1 and the police arrived. Mary reported some soreness, but the investigating officer noted no visible marks or injuries to Mary. In accordance with his training and experience, the officer referred the case for a misdemeanor charge of battery because the soreness described by Mary met the definition for simple "bodily harm" under Wisconsin law, but there was no evidence to support a finding of felony "great bodily harm" or "substantial bodily harm." Despite some felony statutes potentially applying to the situation, the officer was without any felony offense clearly prohibiting Rick's actions that night because the injury to Mary was minimal despite the conduct being very dangerous.

In 2001, *The Journal of Emergency Medicine* printed a collection of articles which revealed that non-lethal strangulation and suffocation occurred far more commonly than previously thought, particularly within domestic relationships. The studies also found that non-lethal strangulation and suffocation most often occur during the later cycles of violence in a relationship, which demonstrates two troubling prospects when an officer receives a report of strangulation or suffocation: (1) Prior violent acts likely occurred in the relationship, and (2) Future violent acts likely will occur in the relationship. The most troubling revelation of studies revealed that, despite this serious and potentially lethal conduct, strangulation and suffocation commonly resulted in misdemeanor criminal convictions if any conviction at all. This article begins by distinguishing strangulation and suffocation from "choking" before examining the lessons to garner from *The Journal of Emergency Medicine* studies and then it concludes that a statute expressly criminalizing strangulation and suf-

* This incident is based upon an actual criminal case in Wisconsin. The name of the victim was changed to protect her identity. The name of the defendant also was changed to further protect the victim's identity.

focation provides the best opportunity to respond appropriately to this high risk conduct, which will identify those high risk offenders most likely to commit future serious, even fatal, assaults.

Dr. George McClane, an emergency physician and expert on strangulation of Sharp Grossmont Hospital in California, reported that strangulation or suffocation is extremely dangerous conduct which may quickly result in a loss of consciousness and even death in a relatively short time period. Dr. McClane noted that people commonly fail to understand the seriousness of strangulation because the conduct is dismissed as mere "choking." However, such a classification is medically incorrect because "choking" is the obstruction of a person's airway caused by an internal object within the body, such as a wayward piece of food blocking the airway. Strangulation is blockage of the airway or closure of the blood vessels caused by external pressure to the neck.

The distinction between an internal versus an external obstruction is significant because the body commonly can dislodge a stray piece of food through coughing or other such internal reactions, but the body does not have a natural response to counteract external pressure applied to the mouth, nose or neck, particularly when the person applying the pressure is stronger than the person being strangled or suffocated.

A person who commits an act of non-lethal strangulation and suffocation has a high likelihood of previously engaging in violate conduct. For example, City Attorney Gael Strack of San Diego, California, examined 300 hundred cases of attempted strangulation and found that there was a history of prior violence in approximately nine out of ten (89 percent) of the cases examined. Attorney Strack also found the average age of the abuser was beyond thirty, demonstrating that experienced abusers have a higher propensity to engage in such conduct than younger, more novice offenders. Dr. Lee Wilbur, of St. Josephs Hospital in Denver, Colorado, found similar patterns with strangulation occurring approximately five years into a relationship and three years after the first incident of violence or abuse. The illustrative case presented at the beginning of this article matched this pattern because Rick suffocated and strangled Mary four years into their relationship with prior violent acts against her. Dr. Donald Smith, Jr., of the Violence Intervention and Prevention Center in Texas, determined that non-lethal strangulation and suffocation occur with some frequency once introduced into a relationship. For example, less than half of strangulation victims reported the incident occurring only once within the relationship. Therefore, there is a high correlation between non-lethal strangulation and suffocation with the prevalence of past acts of violence.

An abuser engaged in non-lethal strangulation and suffocation conduct also poses a greater risk of engaging in serious violent crime, even homicide, in the future than those who do not engage in such conduct. The most apparent indicator on this issue derives from homicide statistics which show that ten percent of violent deaths in the United States are directly because of strangulation, according to reports from Dr. McClane. The actual homicide, however, may not be one of strangulation. For example, Attorney Strack explained that the case that prompted a major review of strangulation in her jurisdiction involved the homicide of a 17 year-old girl in March 1995. In this case, the girl reported being "choked" by her 21 year-old boyfriend and reported the incident to police immediately after it occurred. The girl recanted and her injuries were minimal, so no arrest was made. A week later, the same boyfriend stabbed her to death. This case illustrates that a non-lethal strangulation today may become a homicide tomorrow when the offender is not held accountable. The studies from *The Journal of Emergency Medicine* confirm this assertion with Dr. Smith noting that nearly one-quarter of strangulation or suffocation victims have previously been strangled on at least four prior occasions. Dr. McClane agrees that the abuser will strangle or suffocate again because "abusers tend to perpetrate the same type of violence over and over, often with ever-increasing rage and worsening injury toward the victim."

Despite the highly dangerous conduct, the criminal justice system commonly handles non-lethal strangulation and suffocation cases as misdemeanor as opposed to felony offenses because most criminal offenses only consider the injury caused to the victim as opposed to the conduct of the perpetrator. For example, Wisconsin has over two dozen non-fatal criminal offenses centered upon the injury caused to the victim, but each of these crimes require at least "bodily harm" to the victim; that is to say, actual pain or injury to a victim. In contrast, Wisconsin essentially has only one general statute criminalizing dangerous conduct not requiring actual pain or injury, which is the recklessly endangering safety statute. This statutory imbalance places the focus on the victim's injury as opposed to the offender's conduct. Strangulation and suffocation exacerbates this imbalance because visible external injuries do not exist in approximately one half of non-lethal cases, according to the results of the three-hundred cases examined by Attorney Strack. The officer investigating the suffocation and strangulation to Mary faced precisely this dilemma before ultimately referring Rick for misdemeanor battery. Injuries in non-lethal strangulation and suffocation cases often occur below the skin and bruising sometimes does not develop until days after the attack if it develops at all. Wisconsin's criminal statutes simply fail to properly recognize the long term and fatal implications associated with non-lethal strangulation and suffocation.

To remedy this deficiency, representatives from law enforcement, medical, prosecution, and victim-advocate communities joined forces in the autumn of 2006 to create a statute expressly criminalizing strangulation and suffocation in Wisconsin. This group examined the statutes in other states that already have such statutes, including teleconferencing with one of the creators to Minnesota's recently enacted strangulation statute. The diverse membership of the board ensured that the proposed legislation incorporated all the thoughts and concerns to those within the criminal justice system and medical community likely to utilize the proposed statute. Enactment of this legislation will not only properly recognize non-lethal strangulation and suffocation as very serious conduct appropriate of felony disposition, but the legislation brings awareness to those within the criminal justice system and medical community that this dangerous conduct requires an appropriate response and sanction to prevent the living victims of today from becoming the homicide victims of tomorrow.